

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In re;

BKY Case No. 04-60471 DDO

Kari Lynn Kuechenmeister and
Timothy Lawrence Kuechenmeister

Debtors.

Headwaters Federal. Credit Union,

ADV. Case No. 04-6047

Plaintiff,

vs.

**MOTION TO EXTEND DISCOVERY
AND DISPOSITIVE DEADLINES**

Kari Lynn Kuechenmeister and
Timothy Lawrence Kuechenmeister,

Defendants.

TO: The Above Court, and the above-named defendants and their attorney, Robert A. Woodke, Brouse, Woodke & Meyer, PLLP, 312 America Ave. NW, PO Box 1273, Bemidji, MN 56619-1273.

1. In response to Defendants' Motion dated September 29, 2004, Plaintiff Headwaters Federal Credit Union, by and through its attorney, Allen Haugrud, joins in Defendants' request and moves the Court for the relief requested below and gives notice of hearing.

2. Plaintiff requests that this matter be considered based upon the notice provided.

3. Plaintiff agrees with Defendants' requested relief, but would ask the Court to

specifically allow it until November 1, 2004, to provide full and complete Answers to Defendants' Interrogatories.

4. The Court will hold a hearing on this motion on Thursday, October 14, 2004, at 1:30 p.m. or as soon thereafter as counsel may be heard, before the Honorable Dennis D. O'Brien, Judge of the United States Bankruptcy Court, Courtroom 228A, Warren E. Burger Federal Building, 316 North Robert Street, St. Paul, Minnesota.

5. Any response to this motion must be filed and delivered not later than October 11 2004 which is three (3) days prior to the time set for hearing or served and filed by mail not later than Tuesday, October 5, 2004, which is seven (7) days before the time set for hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

6. This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The genesis of this adversary proceeding is a Chapter 7 case that was commenced on April 21, 2004. The First Meeting of Creditors was held on May 19, 2004. The above-captioned adversary proceeding was commenced on July 2, 2004 and is now pending in this Court.

7. This motion arises under 11 U.S.C. Section 105, Bankruptcy Rules 7016 and 7026 and Local Rules 7016-1 and 7026-1. This motion is filed under Bankruptcy Rules 7007 and 9014 and Local Rules 7007-1, 9006-1, 9013-1, 9013-2 and 9017-1.

8. The Court issued a Scheduling Order on this adversary proceeding on August 3, 2004. Plaintiff asserts that an extension in the dispositive motion and discovery deadlines is both necessary and warranted and contends that there is good cause for the

Court to extend such deadlines because there have been difficulties compiling all of the documentation relating to the allegations in the Plaintiffs Complaint and the defenses in the Defendant's Answer. Plaintiff can provide Answers to the interrogatories, but they will be incomplete until additional information is gathered and compiled in a reasonably comprehensible manner. Plaintiff's allegations require reviewing substantial loan documents, daily reports that have been generated, in an effort to determine what monies were received by Defendants. There has been difficulty in obtaining the Plaintiff's own supporting documentation, reviewing the information, and more time will be necessary for the Plaintiff to search its' own bank records, review them, and compile the information in a reasonably concise, intelligible manner to communicate the transactions that occurred. Plaintiff is attempting, in good faith, to provide a complete response specifically to Interrogatory No. 3, which requests Plaintiff to state in detail, not in summary fashion, the information witnesses possess, with "witnesses" being persons having knowledge of any business dealings arising between Plaintiff and Defendants. Plaintiff expects to have such information assembled by October 25, 2004, and will be meeting with its counsel and a representative for the bonding company on or about October 26, 2004. Plaintiff respectfully requests an extension of time to fully answer Defendants' Interrogatories, until November 1, 2004.

9. Plaintiff has provided Defendants with a Response and Supplemental Response to Request for Documents, which it believes includes all documents in existence at this time. Plaintiff may create an additional exhibit for each loan transaction, explaining and setting forth each and every fact in support of its claims with respect to that loan transaction. Plaintiff expects to complete such exhibit or report by November 1, 2004, and

will immediately provide Defendants with a copy.

10. In addition, Plaintiff needs to engage in discovery including taking the depositions of Defendants, Nancy Dahl, Ron Dahl, Craig Dahl, Char Kuechenmeister, but Plaintiff needs to complete its review of the records before such depositions can be taken.

11. Plaintiff's counsel has spoken with counsel for the Defendants and both counsel agree that the deadlines in the Court's prior Scheduling Order of August 3, 2004 should be extended out if the Court is so amenable. Counsel for the Defendants is unable to agree to any extension of time under the current Scheduling Order.

WHEREFORE, Plaintiff respectfully requests that the Court issue an Order as follows:

A. Extending the discovery and dispositive deadline terms of its Scheduling Order dated August 3, 2004, by approximately sixty (60) days and further request that the Court enter an Order in the form attached hereto as Exhibit A (with the same dates as requested by Defendants).

B. Permitting that Plaintiff be allowed to provide supplemental answers to Defendants' Interrogatories no later than November 1, 2004, provided Plaintiff provide its initial answers by October 6, 2004.

C. For such other and further relief as the Court deems equitable in the premises.

Plaintiff's Motion is based upon all of the documents on record, the attached Affidavit of Counsel and the attached Memorandum of Law.

SVINGEN, HAGSTROM, KARKELA,
CLINE & DIRKS, PLLP

Dated: October 1, 2004

By /s/ Allen Haugrud
Allen Haugrud, #42420
P.O. Box 697
Fergus Falls, MN 56538-0697
(218) 736-5456
Attorneys for Plaintiff Headwaters Federal
Credit Union

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In re;

BKY Case No. 04-60471 DDO

Kari Lynn Kuechenmeister and
Timothy Lawrence Kuechenmeister

Debtors.

Headwaters Federal. Credit Union,

ADV. Case No. 04-6047

Plaintiff,

vs.

MEMORANDUM OF LAW

Kari Lynn Kuechenmeister and
Timothy Lawrence Kuechenmeister,

Defendants.

I. INTRODUCTION AND FACTUAL BACKGROUND

Pursuant to Local Rules 7007-1 and 9013-2, Headwaters Federal Credit Union, the Plaintiff herein, submits this Memorandum of Law in support of his Motion to Extend Discovery and Dispositive Deadlines. The Debtor/Defendant filed a Chapter 7 bankruptcy petition on April 21, 2004, and the 11 U.S.C. Section 341 First Meeting of Creditors was duly conducted on May 19, 2004. Plaintiff filed a Complaint to Determine Dischargeability of Debt on or about July 2, 2004. The Debtor/Defendants duly interposed an Answer to the Complaint on or about July 30, 2004.

Plaintiff agrees with Defendants' request that an extension in the dispositive motion

and discovery deadlines is both necessary and warranted and contends that there is good cause for the Court to extend such deadlines because there have been difficulties compiling all of the documentation relating to the allegations in the Plaintiff's Complaint and the defenses in the Defendant's Answer. There has also been difficulty in obtaining the Plaintiff's own supporting documentation and more time will be necessary for the Plaintiff to search its' own bank records, review those records, and compile the information gathered from such records in a reasonably comprehensible, concise manner. Plaintiff's counsel has spoken with counsel for the Defendant and both counsel agree that the deadlines in the Court's prior Scheduling Order of August 3, 2004 should be extended out if the Court is so amenable.

II. ISSUE

Should the Court grant the Plaintiff's Motion to Extend Discovery and Dispositive Deadlines?

III. DISCUSSION

Rule 16(b) of the Federal Rules of Civil Procedure, made applicable to bankruptcy matters by Bankruptcy Rule 7016, provides for the entry of a scheduling order that limits the time to complete discovery and provides that the schedule shall not be modified except by leave of the Judge and upon a showing of good cause." In the Matter of INTERCO, INC., 139 B.R. 224 (Bankr.E.D.Mo. 1992). The time table established by the Court is binding upon the parties and a Court may modify the Order upon a showing of good cause. Goewey v. United States, 106 F.3d 390 (4th Cir. 1997). *See also* SIL-FLO. Inc. v. SFHC, Inc., 917 F.2d 1507 (10th Cir. 1990).

In the present case, an extension in the dispositive motion and discovery deadlines

is both necessary and warranted and there is good cause for the Court to extend such deadlines because there have been difficulties compiling all of the documentation relating to the allegations in the Plaintiff's Complaint and the defenses in the Defendant's Answer. There has been difficulty in obtaining the Plaintiff's own supporting documentation and more time will be necessary for the Plaintiff to review its own bank records, to adequately provide detail and facts in support of the claims listed in its Complaint. Plaintiff's counsel has spoken with counsel for the Defendant and both counsel agree that the deadlines in the Court's prior Scheduling Order of August 3, 2004 should be extended out approximately 60 days if the Court is so amenable. For these reasons, good cause exists for the Court to continue the trial date on the adversary proceeding and to extend the dispositive and discovery time periods.

In addition, Plaintiff requests that it be allowed until November 1, 2004, to provide a full and complete response to Interrogatory No. 3, which requests in detail, not in summary fashion, the information witnesses possess, with "witnesses" being persons having knowledge of any business dealings arising between Plaintiff and Defendants.

IV. .CONCLUSION

Based upon the foregoing, the Plaintiff respectfully requests the Court to extend the discovery and dispositive deadlines on the above-captioned adversary proceeding.

SVINGEN, HAGSTROM, KARKELA,
CLINE & DIRKS, PLLP

Dated: October 1, 2004

By /s/ Allen Haugrud
Allen Haugrud, #42420
P.O. Box 697
Fergus Falls, MN 56538-0697
(218) 736-5456
Attorneys for Plaintiff Headwaters Federal
Credit Union

Exhibit "A"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In re;

BKY Case No. 04-60471 DDO

Kari Lynn Kuechenmeister and
Timothy Lawrence Kuechenmeister

Debtors.

Headwaters Federal. Credit Union,

ADV. Case No. 04-6047

Plaintiff,

vs.

AMENDED SCHEDULING ORDER

Kari Lynn Kuechenmeister and
Timothy Lawrence Kuechenmeister,

Defendants.

A hearing on the above-captioned adversary proceeding was held before the Honorable Dennis D. O'Brien, Judge of the United States Bankruptcy Court, on October 14, 2004, upon Defendants' and Plaintiff's respective Motions to Extend Discovery and Dispositive Deadlines. Appearances were noted on the record. Based upon all of the documents, memoranda and records available to this Court,

IT IS HEREBY ORDERED:

1. All Discovery shall be concluded no later than October 1, 2004, unless an extension is granted upon motion to the Court. **DISCOVERY REQUESTS ARE TO BE LIBERALLY CONSTRUED. COUNSEL SHALL NOT MANIPULATE THE DISCOVERY RULES SO AS TO HINDER, IMPEDE OR OBSTRUCT LEGITIMATE, REASONABLE DISCOVERY REQUESTS. HOWEVER, COUNSEL SHALL NOT USE THE DISCOVERY PROCESS TO HARASS, EITHER BY SEEKING INFORMATION WHOLLY UNRELATED TO THE CAUSE OF ACTION UNDER CONSIDERATION, OR OTHERWISE. SANCTIONS WILL BE IMPOSED UPON**

A PARTY AND COUNSEL WHO ARE FOUND TO HAVE ABUSED OR MISUSED DISCOVERY. SANCTIONS WILL BE IMPOSED IN THE MINIMUM AMOUNT OF \$500.00, AND MAY BE IMPOSED IN AMOUNTS OF \$1,000.00 OR MORE. ALL DISCOVERY DISPUTES WHICH REQUIRE JUDICIAL RESOLUTION WILL RESULT IN THE IMPOSITION OF SANCTIONS.

2. All nondispositive motions, including motions relating to discovery, shall be filed on or before November 30, 2004.
3. All dispositive motions, including motions relating to discovery, shall be filed on or before January 5, 2005.
4. Motions not filed by dates fixed shall not be heard.
5. Case will considered "ready for trial" on expiration of dispositive motion period.
6. Upon settlement, each party has an independent obligation and shall notify the calendar clerk, within 24 hours after a settlement agreement has been reach. Unless the Court orders otherwise, the settlement documents shall be filed within ten (10) days after oral notice of the settlement.
7. The dates fixed in this order are mandatory. Deadlines shall not be extended except on motion and for good cause.
8. Plaintiff shall serve full and complete answers to Defendants' Interrogatories no later than November 1, 2004, and specifically with respect to Interrogatory No. 3.

Fed. R. Civ. P. 26 (a) (1), (a) (2), (a) (3) and (f) do not apply in this proceeding.

BY THE COURT:

Dated:.. October ____, 2004

Dennis D. O'Brien
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

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BKY Case No. 04-60471 DDO

Kari Lynn Kuechenmeister and
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Debtors.

Headwaters Federal. Credit Union,

ADV. Case No. 04-6047

Plaintiff,

vs.

AFFIDAVIT OF ALLEN HAUGRUD

Kari Lynn Kuechenmeister and
Timothy Lawrence Kuechenmeister,

Defendants.

STATE OF MINNESOTA)
)
COUNTY OF OTTER TAIL)

Allen Haugrud, being first duly sworn upon oath, states:

1. I am the attorney for the Plaintiff in the above matter and makes this affidavit in response to Defendants' Motion and in support of Plaintiffs' Motion.

2. We will provide Defendants with initial Answers to Interrogatories, which will be served on or about October 6, 2004. However, such answers will be incomplete in that we will be unable to state in detail all transactions between the Defendants and Plaintiff, and state in detail what we believe to be the facts supporting Plaintiff's claims.

3. The Court issued a Scheduling Order on this adversary proceeding on August 3, 2004. We believe extension in the dispositive motion and discovery deadlines is both necessary and warranted, and there is good cause for the Court to extend such deadlines because there have been difficulties compiling all of the documentation relating to the allegations in the Plaintiff's Complaint and the defenses in the Defendant's Answer. Plaintiff's Answers to the interrogatories will be incomplete until additional information is gathered and compiled in a reasonably comprehensible manner. Plaintiff's allegations require reviewing substantial loan documents, daily reports that have been generated, in an effort to determine what monies were received by Defendants, and how those funds were applied against various accounts. There has been difficulty in obtaining the Plaintiff's own supporting documentation, reviewing the information, and more time will be necessary for the Plaintiff to search its' own bank records, review them, and compile the information in a reasonably concise, intelligible manner to communicate the transactions that occurred. Plaintiff is attempting, in good faith, to provide a complete response specifically to Interrogatory No. 3, which requests Plaintiff to state in detail, not in summary fashion, the information witnesses possess, with "witnesses" being persons having knowledge of any business dealings arising between Plaintiff and Defendants. Headwaters Federal Credit Union expects to have such information assembled by October 25, 2004, and will be meeting with its counsel and a representative for the bonding company on or about October 26, 2004. Plaintiff respectfully requests an extension of time to fully answer Defendants' Interrogatories, until November 1, 2004.

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6. Plaintiff's counsel has spoken with counsel for the Defendants and both counsel agree that the deadlines in the Court's prior Scheduling Order of August 3, 2004 should be extended out if the Court is so amenable. Counsel for the Defendants is unable to agree to any extension of time to answer the Interrogatories under the current Scheduling Order.

/s/ Allen Haugrud
Allen Haugrud

Subscribed and sworn to before me
this 1st day of October, 2004.

/s/ Cindy L. Schwindt
Notary Public

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
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In re;

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vs.

AFFIDAVIT OF SERVICE

Kari Lynn Kuechenmeister and
Timothy Lawrence Kuechenmeister,

Defendants.

STATE OF MINNESOTA)
)SS.
COUNTY OF OTTER TAIL)

Allen Haugrud, being first duly sworn on oath deposes and says that on the 1st day of October, 2004, at Fergus Falls Minnesota, he mailed a copy of the Plaintiff's Motion to Extend Discovery Deadlines, Affidavit of Allen Haugrud, Memorandum; and proposed Order to Defendants' attorney, and the other interested parties, as follows:

Robert A. Woodke
Brouse, Woodke & Meyer, PLLP
312 America Ave. NW
PO Box 1273
Bemidji, MN 56619-1273

United States Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Tamara L. Yon, Trustee
P.O. Box 605
Crookston, MN 56716

/s/ Allen Haugrud
Allen Haugrud

Subscribed and sworn to before me
this 1st day of October, 2004.

/s/ Cindy L. Schwidt
Notary Public

Exhibit "A"

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7. The dates fixed in this order are mandatory. Deadlines shall not be extended except on motion and for good cause.
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BY THE COURT:

Dated:. October ____, 2004

Dennis D. O'Brien
United States Bankruptcy Judge